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**POSITION PAPER ON THE PROPOSED PRIVATE
VOLUNTARY ORGANISATIONS (AMENDMENT) BILL,
2021**

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INTRODUCTION AND BACKGROUND

Non-Governmental Organisations (NGOs) play an important role in Zimbabwe's development through provision of material and technical assistance to a number of citizens around the country. The work of Civil Society Organisations (CSOs) in Zimbabwe is mainly centred on human rights issues, livelihoods, humanitarian assistance, environmental protection, advocacy for pro-poor/people, progressive policies or legislations and acting as a watchdog on government. Thus, CSOs play a complimentary role to the Government programmes and mandate. As such, Government regulations should facilitate an enabling operating environment for effective and efficient programme implementation. Zimbabwe's CSOs, as key actors in the civic space, have evidently been subjected to a plethora of legal, policy and administrative instruments by Government seeking to enhance regulatory control of the civic space. Zimbabwean law acknowledges a three-tier registration regime for NGOs that is; Private Voluntary Organisations (PVOs) (under the PVO Act administered by the Ministry of Public Service, Labour and Social Welfare), Trusts (Zimbabwe's Deeds Registries Act) and Common Law Universities. This diversity of registration models has created complexities in regulation of CSOs. CSOs are subjected to a multiplicity of gatekeepers (state and non-state) demanding reports and accountability for CSOs on various aspects of their work. This has caused unnecessary bottlenecks on CSOs operations. It has emerged from various sources that the hostile reception of CSOs by some state actors is due to the perception that the sector is active in anti-government political lobbying. The hostile reception by a number of state actors has been seen through imprisonment of a number of CSO leaders, threats to close a number of NGOs and the freezing of accounts belonging to NGO's in the country under the pretence of financial audits.

The main purpose of this position paper is to give an analysis of the proposed Private Voluntary Organisation (PVO) Amendment Bill and also provide an in depth analysis of the impact of this bill on the operations of civil society organisations as legal personas particularly women's rights organisations that have been operating in Masvingo. There are a number of civil society organisations which operate in Masvingo province with sole purpose of advancing development for all the people. This analysis shall first give an outline of the purpose of the Bill and then discuss the main issues under the proposed amendment bill such as the political involvement of Private Voluntary Organisations (PVOs), conformity and implementation of the Financial Action Taskforce (FATF) recommendation 8 for Non Profit Organisations (NPOs) powers of the minister and the registration process and also the human rights implications of the bill.

RATIONALE

The rationale for this paper is premised on the following grounds

- Local civil society is on the frontline, and suffers greatly from closing space, organisations forced to disband, relocate or change activities, and unable to secure funding. This challenges internationally recognised rights (i.e. freedom of speech, association and assembly).
- Development and humanitarian partners also experience pressures and restrictions, e.g. in terms of the type of programmes they can fund, lack of respect for international humanitarian law and limited opportunities for political dialogue.
- Shrinking of civic space contributes to wider movements of democratic recession, through reduced scrutiny and reporting on policies and on human rights abuses as well as on attempts to subvert independent institutions.
- Civic space is an integral part of the 2030 Agenda. SDG 16 is about promoting peaceful and inclusive societies for sustainable development, access to justice for all and "building effective

inclusive and accountable institutions at all levels”. Closing up Civic space derails the 2030 Agenda of Leaving No One Behind.

CONTEXTUAL ANALYSIS OF THE CURRENT CIVIC SPACE

One of the fundamental roles of CSOs in Zimbabwe is to provide checks and balances for the three arms of the government namely the Executive, the Judiciary and the Legislature. An independent and empowered civil society is an essential component and ingredient of a healthy country conducive for growth, development and prosperity. Currently there are emerging threats to clamp down on operations of CSOs by the Zimbabwean government. Some of these threats have been made through the President’s State of the nation address. These threats can be seen as a threat to the independence of NGOs in performing their role as watchdog over government.

On the 30th of June 2021, Harare Metropolitan Provincial Development Coordinator issued a letter advising that all NGOs are now required to register with the Provincial Development Coordinator, submit their work plans and project commissioned by 9 July 2021. These developments are also coming at a time when there is ongoing review of the PVO Act which is also motivated by the intention to enact an NGO bill. This clearly shows that the government of Zimbabwe has plans to tighten the operating space of CSOs in the country.

Women’s groups have become notably more active by connecting their rights agenda to the COVID 19 pandemic. It can be noted that women have suffered targeted victimization by soldiers, police and other security forces during the different lockdown levels induced by the covid-19 pandemic. The state’s heavy-handedness has resulted in a shrinking civic space. Activists and civil society actors who have confronted the regime’s actions during the pandemic have been harassed, arbitrarily arrested, and, in some instances, abducted and tortured; their attempts to protest have been ruthlessly quashed. Civil society has been seriously crippled by stringent surveillance measures and the targeted victimization of critical voices. Although there has been an increased watchdog role of civic groups in Zimbabwe this year, it can be noted that there is a continuous lack of an enabling civic space for the operation of CSOs in Zimbabwe.

PURPOSE OF THE BILL

The Private Voluntary Organisations (Amendment) Bill, 2021 seeks to amend the Private Voluntary Organisation Act [Chapter 17:05]. There are two main reasons for these amendments which are, to comply with the Financial Action Taskforce (FATF) recommendations made to Zimbabwe and to streamline administrative procedures for private voluntary organisations to allow for efficient regulation and registration. It is trite to note that FATF is an intergovernmental organisation founded in 1989 on the initiative of the G7 countries with the main objective of developing policies to combat money laundering and financial terrorism. To this end Zimbabwe was placed under a monitoring programme in October 2018 by FATF in order to ensure that the country aligns its laws on private voluntary organisation to recommendation 8 which provides that PVOs can be abused by money launderers and terrorist financiers as such, there is need to have clear laws that set out a framework to prevent any potential abuse in key sectors.

The PVO Amendment Bill was necessitated by growing regional and global concerns about money laundering and the financing of terrorist activities. It is now known that terrorist activities can be

committed using seemingly authentic transactions, either as humanitarian aid or as development assistance. Since the current PVO Act was silent in this regard, the Bill seeks to close the loophole and ensure that all PVO activities are transparent and are conducted in the national interest. As a member of the International Financial Action Task Force, Zimbabwe is obligated to ensure compliance by all PVOs operating in the country, without exception.

One of the key areas that will be affected by the amendment of the Private Voluntary Organisation (Amendment) Bill is the Civil Society in Zimbabwe in particular women's rights organisations.

According to Bachelet,

'Civic space is the environment that enables civil society to play a role in the political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives, including by: accessing information, engaging in dialogue, expressing dissent or disagreement, and joining together to express their views'.¹

To this end, an open and pluralistic civic space that guarantees freedom of expression and opinion as well as freedom of assembly and association, is a prerequisite for making development and peace sustainable. These organizations are obligated to be non-partisan by the PVO Act and the assumption is that they are until the contrary is proved. However, the government claims, without producing evidence, that many of them have abused Western donor funds to support partisan actions and agendas.

COMPLIANCE WITH THE FINANCIAL ACTION TASK FORCE (FATF)

One of the main purposes of the Bill is to curb money laundering and financial terrorism in Zimbabwe. The FATF recommendation no 8 requires that the laws and regulations that govern non-profit organisations be reviewed so that these organisations cannot be abused for the financing of terrorism. To this end, the FATF recommendation no 8 seeks to ensure that CSOs will not be used as drivers and vehicles of money laundering and terrorism financing.

Notably the Bill is a dice in the right direction in terms of compliance to the directive under the FATF recommendation No 8. Clause 2 which seeks to amend Section 2 of the PVO Act extends the definition of assets and also gives the Minister powers to strictly monitor the operations of Private Voluntary Organisations. Therefore such measures can be regarded as positive steps towards compliance to FATF recommendation no 8.

CHANGES BROUGHT BY THE BILL

EXTENSION OF DEFINITIONS UNDER THE BILL

The proposed Bill under clause 2 which seeks to amend Section 2 of the Private Voluntary Organisation Act extends the definition of funds or other assets and also the definition of Private Voluntary Organisations. The proposed insertion states that, funds or other assets means, any assets, including but not limited to economic resources, (including oil and other natural resources), financial assets, property or every kind, whether tangible or intangible, movable or immovable, however acquired and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such fund or other assets, including, but not limited to bank credits, travellers'

¹ Michelle Bachelet, United Nations High Commissioner for Human Rights 2 October 2019, Dublin Platform for Human Rights Defenders. <https://www.ohchr.org/EN/Issues/CivicSpace/Pages/ProtectingCivicSpace.aspx>.

cheques, bank cheques, money orders, shares, securities, bonds, drafts or letters of credit, and any interest, dividends or other assets, and any other assets which potentially may be used to obtain funds, goods or services.

The term “money laundering” describes a range of practices used to disguise the source of illicit profits and integrate them into the legitimate economy. Simply put, money laundering means ‘washing’ dirty money so that it appears clean. The term terrorist financing encompasses the means and methods used by terrorist organizations to finance their activities. This money can come from legitimate sources, for example from profits from businesses and charitable organizations. Although the above are internationally accepted definitions, the Bill does not define or adopt a definition of the term money laundering or terrorism financing. This creates a problem when trying to determine acts by Private Voluntary Organisation which might make them vulnerable for money laundering and terrorism financing. The wider definition of the term funds or other assets under the proposed bill is too wide and can lead to abuse of power by responsible authorities in criminalising acts by Private Voluntary Organisations.

Another proposal under the Bill is to extend the meaning of the term Private Voluntary Organisation. Clause 2 which seeks to amend Section 2(ii) of the Private Voluntary Organisation Act extends the definition of PVOs to include, legal person, legal arrangement. In addition to this, the proposed amendment also gives the Minister power through regulations, designated by name, class, or characteristics, any legal person, legal arrangement, body or association of persons, or institution, which the Minister deems to be at high risk of or vulnerable to misuse of purpose of funding terrorism, terrorist organisations or terrorist causes to require such legal person, legal arrangement, body or association of persons, or institution to register as a private voluntary organisation in terms of the Act.

A reading of the above proposal shows that the definition of the term private voluntary organisation is now broader and also more ambiguous with respect to legal arrangements. The minister is given too much power to the extent that he can check the intention of people who register companies, trusts, churches or any other legal arrangements to register as Private Voluntary Organisations if he deems such organisation to be at high risk or vulnerable to misuse for the purposes of funding terrorism. The Bill does not state or outline the categories of actions which can be deemed to be high risk or extent of vulnerability for organisations to be forced to register as Private Voluntary Organisation. This may lead to reduction of donor funds for many women’s rights organisations who depend on such funds for running their organisations and advancing economic development in the country. In addition to the reduction of donor funding, this may scare away new donors with hopes of opening Private Voluntary Organisations in the country since there will be unnecessary monitoring and strict requirements to register as such.

In addition to the above, it is important to note that, trusts and common law *universitas* are not governed by the current Private Voluntary Organisation Act. This means that these organizations will now be subject to re-registration and to broad control and regulation by the board and the Minister.

PAYMENT OF REGISTRATION FEES AND REGISTRATION OF PVOs

Clause 4 of the proposed amendment Bill seeks to amend Section 9 (1) of the Private Voluntary Organisation Act by insertion of the words prescribed fee. This basically means that the Bill proposes for the payment of registration fees for Private Voluntary Organisation and the registration procedures now require strict pathways to be followed. The failure to pay registration fees attracts a penalty

under the Bill. The requirement of registration fees and the cumbersome process which needs to be followed might hinder the registration of PVO's in Zimbabwe. It delays the process and might deter potential donors.

POLITICAL INVOLVEMENT

Clause 5 which seeks to amend Section 10 of the Private Voluntary Organisations Act, makes provision for the creation of an offence where a PVOs is involved in supporting or opposing a political party or candidate in relation to the offence created in the Political Parties (Financing) Act. The clause states that,

'When any private voluntary organisation that supports or opposes any political party or candidate in a presidential, parliamentary or local government election or is a party to any breach of Section 7 under Part III of the Political Parties (Finance) Act [Chapter 2:12] as a contributor of funds to a political party or candidate or otherwise shall be guilty of an offence and liable to a fine of level twelve or to imprisonment for a period not exceeding one year, or both such a fine or such imprisonment.'

The proposed insertion has two effects on private voluntary organisations. It prohibits private voluntary organisations from supporting or opposing political parties or their candidates in presidential, parliamentary or local government elections and it also creates a punitive measure for such a conduct in the form of a prison term or payment of a fine. Looking at the nature and mandate of civil society organisations in a democratic state it will be difficult to draw the line between supporting or opposing a political party vis-à-vis championing of human rights. For example, a political party might exclude the involvement of women in participating in elections or taking positions in the party and this might prompt an organisation to oppose such a decision through court action and championing the rights of women enshrined in the constitution such as the right to equality and human dignity. If such a challenge is deemed to be political involvement and the organisation is subjected to a penalty as stipulated in the proposed amendment, this will definitely shrink the civil society organisations' space in Zimbabwe and threaten a peaceful enjoyment of human rights in the country.

Over the past years, the political environment in Zimbabwe has been characterised by violence against women and other marginalised groups. A number of women organisations in Masvingo province through workshops and awareness have helped women to know their rights and be able to participate in the male dominated political environment. Therefore if private voluntary organisations are given strict operating measures and are excluded from the political field this will be a deliberate infringement on constitutional rights such as freedom of expression, freedom of assembly, right to equality and human dignity.

The over broadness and vagueness in the phrase "political involvement" is a breach of the principle of legality in law making, in that it makes it difficult, if not impossible, for CSO leaders, human rights defenders, NGOs and pro-democracy activists to know how to regulate their behaviour to avoid falling foul with the law.

POWERS OF THE MINISTER

The Minister can pass regulations to designate any CSO (exempt or not) which s/he deems to be high risk or vulnerable to be misused for purposes of funding terrorism, terrorist organizations or terrorist causes. The Bill gives a lot of or wider powers in terms of governing Private Voluntary Organisations. These powers if not tempered with, are prone to abuse. In this instance a number of Private Voluntary Organisations Executive Committees might be targeted by the government.

It is clear that these provisions give the Minister arbitrary power to control PVO activities, or determine how they shall operate. One such provision is Clause 7 of the Bill which seeks to amend Section 21 of the Private Voluntary Organisations Act. The proposed clause gives the minister powers to suspend all or any members of the executive committee if the organisation has ceased to operate, there is maladministration of the organisation which adversely affects the activities of the organisation, the organisation is involved in **any** illegal activities and if it is necessary or desirable to do so in the public interest. The suspension of the executive committee is a strict penalty for private voluntary organisations under conditions such as involvement in any illegal activities. Such conduct can easily be curtailed through a fine or a warning. The term public interest is too broad to be used as a qualification for suspension of the steering wheel of private voluntary organisations. Such powers must be left to the courts to determine instead of giving the ultimate power to the Minister. As the Bill stands, there is no recourse to the courts or any tribunal to challenge the Ministers decisions, or at the very least, have them reviewed.

CRIMINALIZATION OF PVO ADMINISTRATION

The proposed bill does not seek to change conduct punishable as criminal offences, but adds to them the terrorism parts. The harshest criminal penalty in the Amendment Bill is a level fourteen fine or imprisonment not exceeding five years or to both such fine or imprisonment as outlined under Clause 11. The broad powers given to the minister and the open casted illegal activities which PVO's might be penalised for make it difficult for civil society organisations to operate in Zimbabwe. It is suggested that civil remedies or administrative fines without the option for imprisonment are reasonable for punishment of acts done by PVO's.

HUMAN RIGHTS ANALYSIS

The PVO Bill is retrogressive. It violates the right to freedom of association. The concern here is that the provision in the proposed Amendment Bill of prohibition from "political involvement" for PVOs is overly broad and vague to has a potential of being misused to target for persecution CSO leaders, pro-democracy activists, human rights defenders and PVOs that may be involved in promoting and protecting civil and political rights. The Bill also gives too much power to the Executive to control and interfere with the work of PVOs. It increases the surveillance and monitoring of PVO's. It seeks to criminalise PVO's work and human rights defending. This will hinder the operations of PVOs which operate as a watchdog to the government.

In a nut shell, the Private Voluntary Organisation Bill is an example of a repressive law, which increases restrictions on freedoms to express, participate, assemble and associate.

RECOMMENDATIONS

In line with the above analysis of the proposed Private Voluntary Organisation (Amendment Bill), the following recommendations are made:

- The President of Zimbabwe must not sign and assent to the PVO amendment Bill.
- Further consultative meetings must be conducted with the intention of aligning the Private Voluntary Organisation Act with Zimbabwe's obligations under its Constitution, International human rights standards, the SADC Guidelines, and the UN Declaration on Human Rights Defenders on protecting and promoting the right to freedom of expression, freedom of assembly and association.

- The government of Zimbabwe must change the cumbersome registration process and strict surveillance system of PVOs so as to promote a conducive working environment between the government and private voluntary organisations.
- The government of Zimbabwe must remove the PVO registration fee, and give time limits to expedite decisions on registration and de-registration.
- The government of Zimbabwe must eliminate the principle of criminal liability for the operation of PVOs.
- The government should consider alternative ways of preventing money laundering and financial terrorism which do not infringe on civil society space. For example, the Minister should only take action against a CSO based on financial audit results instead of acting on suspicion or on the vague and undefined “public interest”

ABOUT CITIZENS IN ACTION SOUTHERN AFRICA

Citizen in Action Southern Africa (CIASA) is a people centric organization established by a group of activists coming together to defend, promote and empower marginalized people to fully enjoy their rights. The CIASA was formed after the realization that marginalized communities are being left behind in the empowerment and national development discourses of several Southern African countries owing to lack of specific targeted intervention created for people by people with people. CIASA was established to provide oversight and think tanking around the welfare and rights of marginalized groups especially women and girls with a sole purpose of ensure progressive realization and enjoyment of rights by all.

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